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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TIMOTHY SCOTT ADAMS,)	NO. EDCV 13-1815-TJH (MAN)
Petitioner,)	ORDER: DISMISSING PETITION WITH
v.)	PREJUDICE; AND DENYING CERTIFICATE
PEOPLE OF THE STATE OF)	OF APPEALABILITY
CALIFORNIA AND SUPERIOR COURT)	
OF RIVERSIDE CA.,)	
Respondent.)	

On October 4, 2013, Petitioner, a California prisoner, filed a habeas petition, pursuant to 28 U.S.C. § 2254 ("Petition"). Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts provides that a petition for writ of habeas corpus "must" be summarily dismissed "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court." Here, it plainly appears that the claim raised in the Petition is not cognizable and could not state any basis for federal habeas relief even if amendment were allowed. Moreover, the Petition is unexhausted. Therefore, the Petition must be dismissed.

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1 BACKGROUND

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3 Petitioner was convicted and sentenced in April 1993. He is serving a sentence of 15 years
4 to life. (Petition at 2.)
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6 The instant Petition is Petitioner's second Section 2254 petition filed in this Court. His prior
7 Section 2254 petition was filed in March 2012, in Case No. EDCV 12-00338-TJH (MAN), and
8 sought to challenge a state parole board decision that found Petitioner to be unsuitable for parole.
9 On March 20, 2012, the prior petition was denied and dismissed with prejudice. On December
10 20, 2012, the United States Court of Appeals for the Ninth Circuit denied a certificate of
11 appealability (Case No. 12-55711).¹
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13 PETITIONER'S HABEAS CLAIM

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15 Although couched as raising two separate grounds for relief, the Petition raises a single
16 claim challenging the restitution order to which Petitioner is subject. Petitioner complains that,
17 when the trial court imposed a restitution amount of \$10,000.00 at the time Petitioner was
18 sentenced in 1993, the trial court failed to take into consideration Petitioner's ability to pay the
19 ordered restitution, including his indigency. Petitioner asks the Court to vacate or reduce the
20 \$10,000.00 restitution amount. (Petition at 3-4.)
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22 DISCUSSION

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24 The Petition suffers from obvious procedural flaws. Pursuant to Rule 2(d) of the Rules
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27 ¹ Pursuant to Rule 201 of the Federal Rules of Evidence, the Court has taken judicial
28 notice of its own records and files, as well as of the electronically available dockets of the: Ninth
Circuit available pursuant to the PACER system; and the California Court of Appeal and California
Supreme Court available at <http://appellatecases.courtinfo.ca.gov>.

1 Governing Section 2254 Cases in the United States District Courts, a state habeas petitioner
2 seeking federal habeas relief must present a habeas petition that “substantially follow[s]” the form
3 of petition accompanying the Section 2254 Rules or the form of petition prescribed by a local rule
4 of the pertinent District Court. Local Rule 83-16.1 requires state prisoners seeking federal habeas
5 relief in the Central District of California to utilize the habeas petition form approved and supplied
6 by this District Court, which is Form CV-69. Petitioner did not utilize Form CV-69 and, thus, did
7 not comply with Rule 2(d) and Local Rule 83-16.1. In addition, in violation of Rule 2(a) of the
8 Rules Governing Section 2254 Cases in the United States District Courts, the Petition does not
9 name an appropriate Respondent. Pursuant to Rule 2(a), Petitioner was required to name as
10 Respondent the state officer who has custody of him, i.e., the Warden of his present institution.

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12 These procedural defects could be corrected if Petitioner were afforded leave to amend.
13 However, there are readily-apparent and non-rectifiable defects that require the dismissal of this
14 action, and thus, granting leave to amend would be futile and inappropriate.

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16 The Petition plainly is unexhausted. Petitioner alleges that he sought habeas relief in the
17 trial court; in addition, he has appended to the Petition a copy of a September 19, 2013 Order of
18 the California Court of Appeal (Case No. E059535) denying a habeas petition filed by Petitioner.
19 (Petition at 6 and attachments.) However, Petitioner does not allege that he has sought habeas
20 relief in the California Supreme Court with respect to his present claim and has received a ruling
21 from the state high court on his claim. A review of the California Supreme Court’s dockets shows
22 that Petitioner has not filed anything in the state high court since a 2011 habeas petition, which
23 was denied in 2012 (Case No. S194458).² Federal courts may not grant habeas relief to a person
24 held in state custody unless the petitioner has exhausted his available state court remedies as to
25 each of the issues presented. 28 U.S.C. § 2254(b)(1)(A); Rose v. Lundy, 455 U.S. 509, 518, 102

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27 ² Petitioner alleges that the last time he sought habeas relief in the California Supreme
28 Court was in Case No. S194458, in connection with the parole denial claim he raised in his first
Section 2254 habeas petition. (Petition at 5.)

1 S. Ct. 1198, 1203 (1982); Fields v. Waddington, 401 F.3d 1018, 1020 (9th Cir. 2005). Petitioner's
2 state judicial remedies are not exhausted, because the California Supreme Court was not afforded
3 a chance to rule on Petitioner's present challenge to his restitution order before Petitioner sought
4 federal habeas relief. Because the Petition is fully unexhausted, it must be dismissed.³ Rose, 455
5 U.S. at 522, 102 S. Ct. at 1205.

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7 A dismissal for lack of exhaustion normally would be without prejudice. However, there
8 is an additional reason why the Petition must be dismissed, which mandates that the dismissal be
9 with prejudice. The claim alleged in the Petition is not cognizable in federal habeas review,
10 because as the Ninth Circuit has made clear, the federal habeas statute does not provide
11 jurisdiction over a claim challenging a restitution order, even when the petitioner is incarcerated.
12 In Bailey v. Hill, 566 F.3d 976 (9th Cir. 2010), the petitioner pleaded guilty and was ordered to
13 pay restitution. He filed a Section 2254 petition in which he alleged that his counsel provided
14 ineffective assistance by not objecting to the restitution order imposed upon him. The Ninth
15 Circuit affirmed the dismissal of the petition on the ground that the petitioner did not meet Section
16 2254's "in custody" requirement for jurisdiction. *Id.* at 977. The Ninth Circuit concluded that
17 Section 2254 "does not confer jurisdiction over a state prisoner's in-custody challenge to the non-
18 custodial portion of his criminal sentence," such as a restitution order. *Id.* at 982; see also *id.* at
19 984 ("we hold that § 2254(a) does not confer jurisdiction over a habeas corpus petition raising
20 an in-custody challenge to a restitution order").

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22 The claim alleged in the Petition challenges the propriety of the restitution order imposed
23 by the trial court in 1993. The Ninth Circuit has made clear that this Court lacks jurisdiction to
24 consider Petitioner's challenge to that restitution order. Bailey, 599 F.3d at 984 ("courts do not
25 have jurisdiction over a habeas corpus petition brought pursuant to § 2254 challenging only a
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27 ³ As the Petition is fully unexhausted, it cannot be stayed while Petitioner pursues
28 exhaustion. Rasberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006).

1 restitution order"). Accordingly, the Petition is not cognizable and must be dismissed.⁴

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3 For the foregoing reasons, IT IS ORDERED that: the Petition is dismissed, with prejudice,
4 pursuant to Rule 4; and Judgment shall be entered dismissing this action with prejudice.

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6 In addition, pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases in the
7 United States District Courts, the Court has considered whether a certificate of appealability is
8 warranted in this case. See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484-85, 120
9 S. Ct. 1595, 1604 (2000). The Court concludes that a certificate of appealability is unwarranted,
10 and thus, a certificate of appealability is DENIED.

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12 DATED: October 9, 2013

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TERRY J. HATTER, JR.
UNITED STATES DISTRICT JUDGE

PRESENTED BY:

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MARGARET A. NAGLE
UNITED STATES MAGISTRATE JUDGE

4 Although the Court does not rule on the timeliness of the Petition, it notes that the
Petition appears to be grossly untimely, given that the restitution order challenged by Petitioner
was imposed over 20 years ago.